

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Appropriate Framework for Broadband)	CC Docket No. 02-33
Access to the Internet over Wireline Facilities)	
)	
Universal Service Obligations of Broadband)	
Providers)	
)	
Computer III Further Remand Proceedings:)	
Bell Operating Company Provision of)	CC Docket Nos. 95-20, 98-10
Enhanced Services; 1998 Biennial Regulatory)	
Review – Review of Computer III and ONA)	
Safeguards and Requirements)	

**COMMENTS OF THE STATE MEMBERS OF THE
FEDERAL-STATE JOINT BOARD ON SEPARATIONS**

Pursuant to the Commission's Notice of Proposed Rulemaking released February 15, 2002, the state members of the Federal-State Joint Board on Separations (Separations Joint Board) submit these comments for the Commission's consideration.

The Commission initiated this proceeding to examine the appropriate legal and policy framework for broadband access to the Internet provided over domestic wireline facilities. In the Notice, the Commission offers a number of tentative conclusions concerning the appropriate regulatory treatment of wireline broadband Internet access services and requests comment concerning those conclusions. One tentative conclusion is that wireline broadband Internet access services are appropriately classified as information services under Title I of the Act, whether provided over a third party's facilities or self-provisioned facilities.

(Paragraph 16.) The Commission also seeks general comment on the role of the states with respect to wireline broadband Internet access services and specific comments from the state members of the Federal-State Joint Board on Separations (the State Members) concerning the implications for jurisdictional separations of the issues addressed in this proceeding.

The State Members believe it is possible that this proceeding will not require separations process adjustments while the current freeze¹ is in effect. However, at this time, the State Members do not have sufficient information to reach a meaningful conclusion on whether separations changes will be needed.

The central question is how the Commission's final conclusions affect the investment, expenses, and revenues that are subject to separations. In this context, the issue is how the Commission decides to treat investment in deregulated wireline broadband Internet access services.

Generally, we assume that broadband plant and associated expenses and revenues will be removed from the provider's regulated books under Part 64 of the Commission's current rules or something like Part 64. If that task is done properly, we are confident that no change to separations categories and factors will be needed during the current freeze.

However, important questions remain open. For example, if both deregulated broadband services and regulated non-broadband services are provided using common plant, then that plant (and associated expenses² and

¹ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 01-162, 2001 WL 540481 (rel. May 22, 2001).

² Expenses would include appropriate treatment of depreciation expenses for plant jointly used to provide both regulated local exchange and unregulated broadband services. Proper allocation of

taxes) probably should be allocated, in some manner, between the regulated and non-regulated operations. Removing investment under Part 64 is a matter that is beyond the jurisdiction of this Joint Board, but the decision is fundamental to separations and the interests of the states. It defines what is subject to separations and thus could materially affect the intrastate jurisdiction's costs and revenues.

The State Members of the Separations Joint Board do not at this time have sufficient data to offer meaningful suggestions concerning Part 36 changes (or Part 64 changes for that matter). For example, and only by way of illustration, the State Members do not have adequate information regarding the current amount and usage of wireline broadband, the various ways it can be provided, the relative proportions of wholesale versus retail sales, and how broadband services are actually being used by customers. The answers to any of these questions may ultimately affect separations.

Among the many questions, one is particularly difficult. Where wireline broadband is used to provide packetized voice services (sometimes called "Voice Over DSL" or VODSL), those voice services will include some intrastate local exchange and intrastate toll calls. In that case, the broadband investment is used to provide a regulated service. Accordingly, it may be that a portion of the broadband investment, expenses and revenues should remain subject to jurisdictional separations under Part 36.

depreciation would ensure that regulated local rates are allotted no more than a fair share of the cost of accelerated depreciation associated with early retirements caused by plant upgrades necessary to provide broadband, but not voice, services.

It may be that Part 64 already adequately and properly addresses these questions. If not, Part 64 may need adjustment (or another mechanism may need to be developed) to ensure that the proper amount of regulated broadband investment remains subject to separations. However, until we know how much plant, expense, and revenue will be subject to separations, we cannot make a meaningful recommendation about how those amounts should be divided between the jurisdictions. Thus, the State Members cannot at the moment determine whether the final adoption of the Commission's tentative conclusions would require separations changes under Part 36. All we can do is to reiterate our confidence that, if the first task is done properly, there should be no need to change separations categories and factors during the freeze.

When the Commission decides the questions outlined in this Notice, significant separations implications seem probable. The Commission should at that time refer the matter to the Separations Joint Board to gather information and to issue a recommended decision.

Respectfully submitted,

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ON BEHALF OF THE STATE
MEMBERS OF THE SEPARATIONS
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